

160.613 Utility gross receipts license tax -- Exemptions -- User liable if supplier is exempt -- Direct pay authorization -- Tollers.

- (1) There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the district, of utility services, except that "gross receipts" shall not include:
 - (a) Amounts received for furnishing energy or energy-producing fuels to a person engaged in manufacturing or industrial processing if that person provides the utility services provider with a copy of its utility gross receipts license tax energy direct pay authorization, as provided in subsection (3) of this section, and the utility service provider retains a copy of the authorization in its records; or
 - (b) Amounts received for furnishing utility services which are to be resold.
- (2) If any user of utility services purchases the utility services directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax, then the user of the utility services, if the tax has been levied in the user's school district, shall be liable for the tax and shall register with and pay directly to the department, in accordance with the provisions of KRS 160.615, a utility gross receipts license tax for schools computed by multiplying the gross cost of all utility services received by the tax rate levied under the provisions of this section.
- (3) A person engaged in manufacturing or industrial processing whose cost of energy or energy-producing fuels used in the course of manufacturing or industrial processing exceeds an amount equal to three percent (3%) of the cost of production may apply to the department for a utility gross receipts license tax energy direct pay authorization. Cost of production shall be computed on the basis of a plant facility, which shall include all operations within the continuous, unbroken, integrated manufacturing or processing production process that ends with a product packaged and ready for sale. If the person receives confirmation of eligibility from the department, the person shall:
 - (a) Provide the utility services provider with a copy of the utility gross receipts license tax energy direct pay authorization issued by the department for all purchases of energy and energy-producing fuels; and
 - (b) Report and pay directly to the department, in accordance with the provisions of KRS 160.615, the utility gross receipts license tax due.
- (4) A person who performs a manufacturing or industrial processing activity for a fee and does not take ownership of the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity is a toller. For periods on or after July 1, 2018, the costs of the tangible personal property shall be excluded from the toller's cost of production at a plant facility with tolling operations in place as of July 1, 2018.
- (5) For plant facilities that begin tolling operations after July 1, 2018, the costs of tangible personal property shall be excluded from the toller's cost of production if the toller:
 - (a) Maintains a binding contract for periods after July 1, 2018, that governs the

terms, conditions, and responsibilities with a separate legal entity, which holds title to the tangible personal property that is incorporated into, or becomes the product of, the manufacturing or industrial processing activity;

- (b) Maintains accounting records that show the expenses it incurs to fulfill the binding contract that include but are not limited to energy or energy-producing fuels, materials, labor, procurement, depreciation, maintenance, taxes, administration, and office expenses;
- (c) Maintains separate payroll, bank accounts, tax returns, and other records that demonstrate its independent operations in the performance of its tolling responsibilities;
- (d) Demonstrates one (1) or more substantial business purposes for the tolling operations germane to the overall manufacturing, industrial processing activities, or corporate structure at the plant facility. A business purpose is a purpose other than the reduction of utility gross receipts license tax liability for the purchases of energy and energy-producing fuels; and
- (e) Provides information to the department upon request that documents fulfillment of the requirements in paragraphs (a) to (d) of this subsection and gives an overview of its tolling operations with an explanation of how the tolling operations relate and connect with all other manufacturing or industrial processing activities occurring at the plant facility.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 151, sec. 74, effective June 27, 2019. -- Amended 2014 Ky. Acts ch. 137, sec. 1, effective July 15, 2014. -- Amended 2004 Ky. Acts ch. 79, sec. 2, effective July 1, 2005. -- Amended 2002 Ky. Acts ch. 69, sec. 5, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 500, sec. 1, effective July 15, 1998. -- Repealed and reenacted 1990 Ky. Acts ch. 476, Pt. V, sec. 462, effective July 13, 1990. -- Amended 1980 Ky. Acts ch. 27, sec. 1, effective March 6, 1980. -- Amended 1974 Ky. Acts ch. 250, sec. 1. -- Created 1966 Ky. Acts ch. 24, Part III, sec. 9.

Legislative Research Commission Note (6/27/2019). Section 82 of 2019 Ky. Acts ch. 151 states that the amendments to this statute made in Section 74 of that Act apply to transactions occurring on or after July 1, 2019.

Legislative Research Commission Note (6/27/2019). This statute was amended in Section 74 of 2019 Ky. Acts ch. 151. Section 86 of that Act reads, "No claim for refund or credit of a tax overpayment for any taxable period ending prior to July 1, 2018, made by an amended return, tax refund application, or any other method after June 30, 2018, and based on the amendments to subsection (3) of Section 27 of this Act or based on the amendments to Section 74 [this statute] or 75 of this Act, shall be recognized for any purpose."

Legislative Research Commission Note (6/27/2019). This statute was amended in Section 74 of 2019 Ky. Acts ch. 151. Section 87 of that Act reads, "Notwithstanding KRS 446.090, the amendments to subsection (3) of Section 27 of this Act [KRS 139.480] and the amendments to Sections 74 [this statute] and 75 [KRS 160.6131] of this Act are not severable. If the amendment made to subsection (3) of Section 27 of this Act or the amendments to Section 74 or 75 of this Act is declared invalid for any reason, then all amendments to subsection (3) of Section 27 of this Act and the amendments to Sections 74 and 75 of this Act shall also be invalid."

Legislative Research Commission Note (7/12/2006). 2005 Ky. Acts ch. 123, relating to

the creation and organization of the Environmental and Public Protection Cabinet, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in that Act. Such a correction has been made in this section.